

illnesses in property forfeiture proceedings, the hundreds of thousands of people living in mental health facilities and the millions of people with significant functional impairment due to mental illness will remain at risk of losing any real property they might own without due process of law.

## **ARGUMENT**

### **1. THE DECISION OF THE ILLINOIS SUPREME COURT IS IN CONFLICT WITH THIS COURT'S WELL-ESTABLISHED DUE PROCESS PRECEDENTS.**

The question of greatest importance to Amici is whether due process requires a party responsible for giving notice in a tax sale or property forfeiture proceeding to take reasonable steps to ensure that the property owner receives notice when there is reason to believe that owner is confined in a mental hospital and/or is mentally incapacitated. Under United States Supreme Court Rule 10, in deciding whether to grant certiorari, this Court will consider it persuasive if a state court has answered an important federal question in a way that conflicts with relevant precedent of this Court. Sup. Ct. R. 10(c). On the important question at issue here, the Supreme Court of Illinois in the case at bar has ruled that further steps would not be required, which is inconsistent with this

Court's precedent. Specifically, the decision does not square with the standard due process requirement of proper notice set forth in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314-15 (1950) (stating that the means employed in giving notice must be "such as one desirous of actually informing the absentee might reasonably adopt to accomplish it"), as refined in *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 798 (1983) (holding that unless a party is "not reasonably identifiable," constructive notice is not sufficient to satisfy the *Mullane* standard), and *Covey v. Town of Somers*, 351 U.S. 141, 146-7 (1956) (holding that notice to a property owner known to be mentally incompetent was ineffective without special protections).

In the case at bar, when Apex Tax Investments ("Apex") sent notices to Ms. Lowe via certified mail, the notices were returned with a notation by the postal carrier that "person is hospitalized," along with the postal carrier's initials and route number. (Pet. for Cert. at 8.) A person truly "desirous of actually informing" Ms. Lowe of the pending tax sale certainly would have taken further steps after being provided with such potentially useful information. Reasonable steps could have included

something as simple as contacting the post office or interviewing Ms. Lowe's neighbors, as her mental illness was widely known in the neighborhood (*Id.* at 6). In addition, Apex purchased Ms. Lowe's property for \$347.61. (*Id.* at 7.) Although there is no way, at this point, to know what Ms. Lowe's house would have been worth on the open market in 1993, the median value of an owner-occupied housing unit in Riverdale, Illinois, the town in Cook County, Illinois in which Ms. Lowe's property was located, was \$55,800 in 1990. *See* U.S. Dep't of Commerce, Bureau of the Census, 1990 Census of Population and Housing, Summary Tape File 1, 100-Percent data.<sup>3</sup> Even if Ms. Lowe's property was on the low end of home prices in Riverdale three years later, this is still a grossly inadequate purchase price. Allowing a home to be taken for such a low price was against Ms. Lowe's economic self-interest, and such a non-economic decision could be a sign of

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<sup>3</sup>Available at [http://factfinder.census.gov/servlet/DHTMLTable?\\_bm=y&-context=dt&-ds\\_name=DEC\\_1990\\_STF1\\_-CONTEXT=dt&-mt\\_name=DEC\\_1990\\_STF1\\_H023B&-tree\\_id=100&-redoLog=false&-all\\_geo\\_types=N&-geo\\_id=16000US174890&-search\\_results=16000US174890&-format=&-\\_lang=en](http://factfinder.census.gov/servlet/DHTMLTable?_bm=y&-context=dt&-ds_name=DEC_1990_STF1_-CONTEXT=dt&-mt_name=DEC_1990_STF1_H023B&-tree_id=100&-redoLog=false&-all_geo_types=N&-geo_id=16000US174890&-search_results=16000US174890&-format=&-_lang=en)

mental incapacity. If Ms. Lowe was of sound mind, surely she would not have allowed her property to be taken for such a small amount of money. A person who is not incapacitated would likely find a way to come up with the small sum of money required, or at least sell her house on the open market rather than forfeit such a valuable asset without receiving any compensation. Therefore, such a grossly inadequate purchase price should have served as a signal to the purchaser and to the court that something was amiss and that Ms. Lowe had not received adequate notice.

Based on these factors—the notation on the envelope indicating that Ms. Lowe was hospitalized, the wide knowledge in the neighborhood of Ms. Lowe's mental illness, and the grossly inadequate purchase price—Apex should have known that Ms. Lowe was mentally ill and confined in a mental hospital. Therefore, Ms. Lowe was reasonably identifiable, thus bringing the case within the rule of *Mennonite Board* and rendering the constructive notice afforded here insufficient. Similarly, under *Covey*, Apex's constructive knowledge that Ms. Lowe was mentally incompetent made regular notice procedures insufficient.

Therefore, because the notice was ineffective, Ms. Lowe was deprived of her property without due process of law.

**2. WHEN A PARTY RESPONSIBLE FOR GIVING NOTICE HAS CONSTRUCTIVE NOTICE OF A PROPERTY OWNER'S MENTAL INCAPACITY AND/OR CONFINEMENT IN A MENTAL HOSPITAL, SPECIAL PROTECTIONS SHOULD BE INVOKED.**

The law widely recognizes that mental illness affects an individual's ability to function in society, especially if that person has been admitted to a mental health facility. For example, there are several Illinois licensing statutes that deem an involuntary admission to a mental health facility to be an *automatic* suspension of the license, which can only be reinstated upon discharge from the facility and approval of the licensing board. The list of professions so affected is extensive and includes (but is not limited to) interior designers, athletic trainers, optometrists, clinical psychologists, cosmetologists, barbers, dentists, shorthand reporters, professional geologists, and even professional boxers. See Interior Design Profession Title Act, 225 Ill. Comp. Stat. 310/13 (2005); Illinois Athletic Trainers Practice Act, 225 Ill. Comp. Stat. 5/16 (2005); Illinois Optometric Practice Act of 1987.

225 Ill. Comp. Stat. 80/24-b (2005); Clinical Psychologist Licensing Act, 225 Ill. Comp. Stat. 15/15 (2005); Barber, Cosmetology, Esthetics, and Nail Technology Act of 1985, 225 Ill. Comp. Stat. 410/4-8 (2005); Illinois Dental Practice Act, 225 Ill. Comp. Stat. 25/26-c (2005); Illinois Certified Shorthand Reporters Act of 1984, 225 Ill. Comp. Stat. 415/23-b (2005); Professional Geologist Licensing Act, 225 Ill. Comp. Stat. 745/80-b (2005); Professional Boxing Act, 225 Ill. Comp. Stat. 105/16-b (2005).

These restrictions are not limited to Illinois. For example, the standard character and fitness questionnaire published by the National Conference of Bar Examiners for admission to the practice of law asks if the applicant has been diagnosed with "bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder." National Conference of Bar Examiners, *Standard-01 Application* (2005).<sup>4</sup> In addition, state probate laws generally contain provisions for the appointment of a guardian for an "incapacitated person," which includes persons impaired by a mental illness. See Uniform Probate Code § 5-101(1) and § 5-304

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<sup>4</sup> Available at <http://www.ncbex.org/character.htm>.

(2005).<sup>5</sup> Taken together, these varied restrictions put numerous, serious limitations not only on a person's rights and liberties, but also on his or her ability to earn a living.

Along with these restrictions should come extra protections when a person with a mental illness faces losing his or her property while confined in a mental hospital. The law recognizes the need for such special protections in many situations. For example, the criminal justice system recognizes the severe impact mental illness can have on a person's ability to function. Most jurisdictions recognize some sort of insanity defense, *see* Michael L. Perlin, *Mental Disability Law: Civil and Criminal*, § 9A-2 (2d ed. 1998), and this Court has repeatedly held that due process is violated when an accused person is convicted while legally incompetent to stand trial, *see Pate v. Robinson*, 383 U.S. 375, 378, 385 (1966), or when hearing is denied if certain evidence of incompetence is raised, *see Drope v. Missouri*, 420 U.S. 162, 179 (1975). This Court has also recognized that persons with

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<sup>5</sup> The Uniform Probate Code has been adopted at least in part by eighteen states. *See* Legal Information Institute, *Uniform Probate Code Locator* (2006), available at <http://www.law.cornell.edu/uniformprobate.html>.

mental illnesses at times require special protection outside the criminal justice system. In declining to hold the mentally retarded to be a quasi-suspect class, this Court reasoned that doing so would prohibit a legislative body from affirmatively acting to protect the mentally retarded<sup>6</sup>—a result this Court considered unacceptable. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 443-445 (1985).

This Court has also recognized that persons with mental illnesses require special protections when it comes to reading and understanding a consent form:

The characteristics of mental illness thus create special problems regarding informed consent.

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<sup>6</sup> Although the mentally retarded differ from persons with mental illnesses in many respects, the two groups are similar in that their mental condition affects their ability to function in society. As this Court in *Cleburne* stated, "it is undeniable...that those who are mentally retarded have a reduced ability to cope with and function in the everyday world." 473 U.S. at 442. In addition, this Court in *Cleburne* likened the two groups as both having "immutable disabilities setting them off from others, who cannot themselves mandate the desired legislative responses, and who can claim some degree of prejudice from at least part of the public at large." *Id.* at 445-6.



Even if the State usually might be justified in taking at face value a person's request for admission to a hospital for medical treatment, it may not be justified in doing so, without further inquiry, as to a mentally ill person's request for admission and treatment at a mental hospital.

*Zinerman v. Burch*, 494 U.S. 113, 133 (1990). *Zinerman* held that the failure of a mental health facility to take steps to ascertain whether a patient was competent to sign voluntary admission forms is actionable under 42 U.S.C. § 1983 as a violation of procedural due process. *Id.* at 139. Thus, the State was required to provide special protections, above and beyond what might be sufficient for a person with no mental illness, when there was reason to suspect mental incapacity. If persons with mental illnesses deserve special protections when it comes to navigating the complexities of voluntary admission to a mental health facility, it follows that they should also be afforded special protections in the notice that is required to satisfy due process of law in property forfeiture proceedings, a legal process that is even more complicated.

In sum, persons with mental illnesses often have difficulty functioning in society, and as a group they face numerous legal restrictions and special provisions. In the interest of justice, the legal rules distinguishing persons with mental illness as a class should include special protections when a person confined in a mental hospital faces losing his or her property without notice.

**3. NOT AFFORDING THIS EXTRA PROTECTION HAS THE POTENTIAL TO AFFECT HUNDREDS OF THOUSANDS, OR EVEN MILLIONS, OF PEOPLE EVERY YEAR.**

If the rule set forth by the Supreme Court of Illinois is allowed to stand, hundreds of thousands or even millions of people may be affected. In 2000, there were over 182,000 people living in mental hospitals and residential treatment facilities nationwide, down from a high of over 471,000 people in 1969. See U.S. Dep't of Health and Human Services, *Mental Health, United States, 2002* Section VI: Table 5 (Ronald W. Manderscheid et. al. eds., 2002).<sup>7</sup> All of these people could potentially face losing their real property

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<sup>7</sup> At <http://www.mentalhealth.samhsa.gov/publications/allpubs/SMA04-3938/default.asp>.

with no notice if the decision of the Supreme Court of Illinois is allowed to stand.

However, even these numbers do not capture the true extent of the problem. Epidemiological studies show that about 22 to 23 percent of the United States adult population, or 44 million people, have a diagnosable mental disorder. U.S. Dep't of Health and Human Services, U.S. Public Health Serv., *Mental Health: A Report of the Surgeon General* 46 (1999). Even more striking, it is estimated by the United States Surgeon General that nine percent of adults in the United States, or 25.3 million people,<sup>8</sup> experience some "significant functional impairment" from a mental illness. *See id.* at 46-47, Table 2-6. Seven percent of all adults in the United States, or 19.7 million people,<sup>9</sup> have disorders that are present for at least one year, and the most serious mental illnesses ("severe and persistent" mental illness, including schizophrenia, bipolar disorder, severe forms of depression, panic disorder, and

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<sup>8</sup> Population figures calculated using the 2000 United States Census population of 281,421,906. United States Census Bureau, *U.S. Summary: 2000* 2 (2002), available at <http://www.census.gov/prod/2002pubs/c2kpro00-us.pdf>

<sup>9</sup> *Id.*

obsessive compulsive disorder) affect 2.6 percent of adults in the United States, or over 7.3 million people.<sup>10</sup> See *id.* at 46. If no special protection is afforded to people whose mental illness is so serious that they have been confined to a mental hospital, then surely the millions of Americans who exhibit severe functional impairment, even if not confined to a mental institution, will likewise be unprotected and could face losing any real property they may own. Under the decision of the Supreme Court of Illinois, this would be true even if the person responsible for giving notice to the property owner has constructive notice of his or her mental illness.

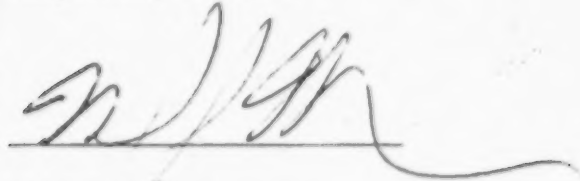
## CONCLUSION

For the foregoing reasons, Amici support the petition for certiorari.

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<sup>10</sup> *Id.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark J. Heyrman', written over a horizontal line.

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